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E-filing

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

MEJ

12
13 ELIZABETH WEST and JENNIFER LU,
14 on behalf of themselves and all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 ABERCROMBIE & FITCH STORES,
19 INC., A & F, LLC, ABERCROMBIE &
20 FITCH MANAGEMENT CO. AND A & F
21 OHIO, INC Defendants.

Case No. **C-04-4730**

CLASS ACTION

1. GENDER DISCRIMINATION (TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 – 42 U.S.C. § 2000e, *et seq.*)
2. GENDER DISCRIMINATION (CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT – Cal. Gov. Code § 12900, *et seq.*)

DEMAND FOR JURY TRIAL

1 Individual and Representative Plaintiffs ELIZABETH WEST and JENNIFER LU
2 (“Plaintiffs”) on behalf of themselves individually and all others similarly situated, allege, upon
3 personal knowledge as to themselves and information and belief as to other matters, as follows:

4 1. Defendants ABERCROMBIE & FITCH STORES, INC., A & F, LLC,
5 ABERCROMBIE & FITCH MANAGEMENT CO. AND A & F OHIO, INC. (hereinafter
6 collectively identified as “ABERCROMBIE”) are a national retailer of clothing.
7 ABERCROMBIE discriminates against individuals on the basis of gender with respect to hiring,
8 firing, job assignment, compensation, managerial promotion and other terms and conditions of
9 employment by enforcing a national policy of preferring male employees for retail store positions
10 and for retail store management jobs, including, but not limited to, retail store employees,
11 managers-in-training, assistant managers, and store managers

12 2. ABERCROMBIE recruits, hires, and maintains a disproportionately male
13 sales force (called “Brand Representatives”) who act as salespeople and recruiters of other
14 potential Brand Representatives.

15 3. ABERCROMBIE systematically refuses to hire qualified women
16 applicants as Brand Representatives, stockers (employees who handle inventory) and overnights
17 (employees who work night shifts) in proportion to their percentage of the pool of qualified and
18 interested prospective employees. ABERCROMBIE applies a strict numerical limit on the
19 number of women Brand Representatives, stockers and overnights who should be hired, and/or
20 on the number of women Brand Representatives who should be on the sales floor.
21 ABERCROMBIE also discourages applications from women applicants and fires qualified
22 women Brand Representatives and retail store employees in order to retain or hire more males.

23 4. When women inquire about employment, ABERCROMBIE managers
24 often inaccurately tell them that the store is not hiring, or give them applications without any
25 intention of considering them for employment.

26 5. ABERCROMBIE discriminates against women through careful scrutiny
27 and monitoring of its stores by regional and district managers and corporate representatives.
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1 These managers and corporate representatives frequently visit stores to ensure, among other
2 things, that the store is properly implementing ABERCROMBIE's discriminatory employment
3 policies and practices. These visits are referred to as "blitzes." Managers or corporate
4 representatives have directed that women Brand Representatives be fired, moved to the stock
5 room or overnight shift, limited to less desirable floor positions or have their hours "zeroed out,"
6 which is the equivalent of termination.

7 6. ABERCROMBIE systematically denies women the opportunity to
8 participate in manager-in-training programs or to be considered for management positions as
9 assistant store managers and store managers.

10 7. This class action is brought by women applicants and employees who
11 applied for sales, stocking, managers-in-training, assistant store managers and store manager
12 positions on behalf of themselves individually and all other women applicants and employees
13 against whom ABERCROMBIE has discriminated against on the basis of gender.
14 ABERCROMBIE has maintained and continues to maintain a pervasive policy or practice of
15 discrimination based on gender in denying employment, desirable job assignments, job transfers,
16 allocation of weekly hours, compensation, promotion to management positions, and other terms
17 and conditions of employment to women in ABERCROMBIE stores throughout the United
18 States.

19 8. This action seeks an end to these discriminatory policies or practices.
20 Plaintiffs also seek an award of back pay and front pay, as well as compensatory damages,
21 punitive damages, and injunctive relief, including reinstatement or instatement, for all class
22 members.

23 JURISDICTION

24 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
25 and 1343.

26 VENUE

27 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 42
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1 U.S.C. § 2000e-5(f)(3). Defendant ABERCROMBIE is a Delaware corporation licensed to do
2 business in California, has retail stores throughout California and this District, and is subject to
3 personal jurisdiction in this district. Members of the Plaintiff class reside in California and
4 throughout the United States, and discriminatory acts alleged in this Complaint occurred in
5 California and other states.

6 INTRADISTRICT ASSIGNMENT

7 11. Assignment to the San Francisco-Oakland District of California is proper
8 because this action is related to *Gonzalez v. Abercrombie & Fitch Stores, Inc.*, No. Dist. Cal. Case
9 No. 03-2817 SI, which has already been assigned to the San Francisco-Oakland District.
10 Assignment of this case to a single court is likely to conserve judicial resources and promote an
11 efficient and consistent determination of the actions. *Gonzalez v. Abercrombie & Fitch Stores,*
12 *Inc.*, initially filed on June 16, 2003, is another pending class action employment discrimination
13 case against ABERCROMBIE for discriminating against applicants and employees on the basis
14 of race, color and/or national origin. Plaintiff JENNIFER LU, an Asian American woman, is also
15 a named plaintiff and putative class representative in the *Gonzalez v. Abercrombie & Fitch*
16 *Stores, Inc.* matter.

17 PARTIES

18 12. Plaintiff ELIZABETH WEST is a woman resident of El Segundo,
19 California. On or about September 1, 2003, she applied for and was denied a Brand
20 Representative position at an ABERCROMBIE store in Redondo Beach, California, because of
21 her gender. She was denied the position despite her extensive prior retail experience.

22 13. Plaintiff JENNIFER LU is an Asian American woman resident of West
23 Covina, California. On or about February 9, 2003, she was terminated as a Brand Representative
24 at an ABERCROMBIE store in Costa Mesa, California, because of her gender and/or race.

25 14. Defendant ABERCROMBIE & FITCH STORES, INC. is an Ohio
26 corporation. Based on the representations of defendants, from July 1996 to August 2000, during
27 which time it was a Delaware corporation, ABERCROMBIE & FITCH STORES, INC. operated
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1 all California ABERCROMBIE stores; from August 2000, when it became an Ohio corporation,
2 to May 2002, it operated all ABERCROMBIE stores; and since May 2002, it has operated all
3 ABERCROMBIE stores outside of California and Ohio.

4 15. Defendant A & F CALIFORNIA, LLC is an Ohio limited liability
5 company. Based on the representations of defendants, since May 2002, it has operated all
6 ABERCROMBIE stores in California.

7 16. Defendant A & F OHIO, INC. is an Ohio corporation. Based on the
8 representations of defendants, since May 2002, it has operated all ABERCROMBIE stores in
9 Ohio.

10 17. Defendant ABERCROMBIE & FITCH MANAGEMENT CO. is an Ohio
11 corporation. Based on the representations of defendants, the MANAGEMENT CO. operates all
12 corporate offices in Ohio.

13 18. Defendants are a national retail clothing seller primarily marketing to
14 teenagers and young adults. According to ABERCROMBIE, it took in \$1.7 billion in net sales
15 during fiscal year 2003. According to its Year 2003 Annual Report, ABERCROMBIE operates
16 700 retail stores nationwide.

17 19. ABERCROMBIE operates stores under three different names:
18 "Abercrombie & Fitch" (the "adult" store), "Hollister," and "abercrombie" (the "children" store).
19 Although each type of store offers different product lines, all stores follow the same human
20 resources policies and practices, participate in the same discrimination, and are run by the same
21 management. Applicants to and employees of each type of store are included in the proposed
22 class.

23 CLASS ACTION ALLEGATIONS

24 20. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a), (b)(2),
25 and (b)(3) on behalf of a class of all past, present, and future women ABERCROMBIE retail
26 store employees and applicants for retail store positions and/or management positions with
27 ABERCROMBIE who have been, continue to be, or in the future may be discouraged from
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1 applying or denied employment, desirable job assignments, job transfers, desirable hours,
2 compensation, promotion to management-in-training and other management positions, other
3 terms and conditions of employment on the basis of their gender, and/or who have been
4 terminated on account of the policies or practices complained of herein. The discriminatory
5 policies and practices complained of herein have existed since at least February 24, 1999.

6 21. Plaintiffs are members of the class they seek to represent.

7 22. The members of the class identified herein are so numerous that joinder of
8 all members is impracticable. The number of class members is currently indeterminate, but is
9 certainly larger than can be addressed through joinder. According to its Year 2003 Annual
10 Report, ABERCROMBIE had approximately 30,000 employees. In addition, temporary
11 employees are hired during peak periods, such as the holiday season. The addition of this large
12 temporary workforce swells the proposed class by thousands more. Almost all of
13 ABERCROMBIE's 700 stores employ some women in retail store positions but each store, on
14 average, annually receives tens of thousands of applications from qualified women who are
15 potential retail store employees. As a result of ABERCROMBIE's systematic discriminatory
16 hiring practices, an unknown number of women applicants have also been deterred from
17 applying. Thus, although the precise number of qualified women applicants who are not hired
18 and/or who are fired or otherwise discriminated against is currently unknown, it is far greater than
19 can be feasibly addressed through joinder.

20 23. There are questions of law and fact common to the class, and these
21 questions predominate over any questions affecting only individual members. Common
22 questions include, among others: (1) whether ABERCROMBIE's policies or practices
23 discriminate against women employees and applicants; (2) whether ABERCROMBIE's policies
24 and practices violate Title VII; (3) whether compensatory and punitive damages, injunctive relief,
25 and other equitable remedies for the class are warranted.

26 24. The representative Plaintiffs' claims are typical of the claims of the class.

27 25. The representative Plaintiffs will fairly and adequately represent and
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1 protect the interests of the members of the class. Plaintiffs have retained counsel competent and
2 experienced in complex class actions, employment discrimination litigation, and the intersection
3 thereof.

4 26. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
5 because ABERCROMBIE has acted and/or refused to act on grounds generally applicable to the
6 class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the class
7 as a whole. The class members are entitled to injunctive relief to end ABERCROMBIE's
8 common, uniform, and unfair sexually discriminatory personnel policies and practices.

9 27. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
10 because common questions of fact and law predominate over any questions affecting only
11 individual members of the class, and because a class action is superior to other available methods
12 for the fair and efficient adjudication of this litigation. The class members have been damaged
13 and are entitled to recovery as a result of ABERCROMBIE's common, uniform, and unfair
14 sexually discriminatory personnel policies and practices. ABERCROMBIE has computerized
15 payroll and personnel data that will make calculation of damages for specific class members
16 relatively simple. The propriety and amount of punitive damages are issues common to the class.

17 CLAIMS OF REPRESENTATIVE PLAINTIFFS

18 ELIZABETH WEST

19 28. Plaintiff ELIZABETH WEST is a female resident of El Segundo,
20 California. On or about September 1, 2003, she applied for a Brand Representative position at an
21 ABERCROMBIE store in Redondo Beach, California. She was interviewed for the position
22 along with two other female applicants and a male applicant. It was Ms. WEST's plan to initially
23 work as a sales representative and ultimately advance to an ABERCROMBIE management
24 position. Although Ms. WEST had extensive prior retail experience, she was denied employment
25 in favor of a male. ABERCROMBIE has discriminated against Ms. WEST by denying her
26 employment because of her gender.

27 29. On or about June 23, 2004, Ms. WEST filed class charges of gender
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1 discrimination with the EEOC. Ms. WEST received a copy of her Notice of Right to Sue from
2 the EEOC on November 3, 2004. This complaint is therefore timely filed.

3 **JENNIFER LU**

4 30. Plaintiff JENNIFER LU is a female student at the University of California
5 at Irvine. She worked as a Brand Representative at the Abercrombie store in the Crystal Court
6 Mall in Costa Mesa, California from September 2000 to February 2003. She was an experienced,
7 knowledgeable, hardworking and dependable employee, entrusted with responsibilities that only
8 the most trustworthy and more senior staff were given.

9 31. In or around January 2003, representatives from corporate and/or regional
10 headquarters, including the regional president, visited the Crystal Court Mall store on an
11 inspection tour, or "blitz." These headquarters/regional representatives reiterated to the Store
12 Manager and other managers the importance of having a predominantly male workforce. Soon
13 after this "blitz," on or about February 8, 2003, plaintiff LU and some four other women Brand
14 Representatives were terminated and/or constructively discharged. These terminations and/or
15 constructive discharges were not done for any legitimate business reason, such as poor work
16 performance, but on the basis of gender. Assistant Manager James Morishita told Ms. LU that
17 she and the other women had been terminated because the regional president had complained that
18 there were "too many girls working there." The store hired several male Brand Representatives
19 within weeks of firing Ms. LU and the other women employees.

20 32. On February 8, 2003, Ms. LU learned that she had been fired. She
21 informed the Store Manager that she was willing to be flexible with shift assignments, and that if
22 the staffing needs picked up in the summer months or other peak shopping seasons, she would
23 like to be considered. General Manager Kyle Richter told her that she was not needed at that time
24 nor would she be needed in the future.

25 33. ABERCROMBIE discriminated against Ms. LU on the basis of her gender
26 by (a) terminating her employment because she is not male; and (b) assigning her fewer hours
27 than similarly-situated white Brand Representatives.
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1 34. On or about April 22, 2003, Ms. LU filed a charge of discrimination with
2 the EEOC. Ms. LU received a copy of her Notice of Right to Sue from the DFEH, dated
3 April 29, 2003. On or about March 29, 2004, ABERCROMBIE and Ms. LU entered into a
4 tolling agreement whereby they agreed that any statutes of limitations relating to Ms. LU's gender
5 discrimination claims against ABERCROMBIE would be tolled, pending settlement discussions,
6 until Ms. LU gave ABERCROMBIE written notice of her intent to file a complaint, which she
7 has done. Thus, this Complaint is timely filed.

8 **GENERAL POLICIES OR PRACTICES OF DISCRIMINATION**

9 35. The terminations and unjustified restrictions of employment experienced
10 by the Representative Plaintiffs are part of a general policy or practice of discrimination on the
11 basis of gender in employment that has existed at ABERCROMBIE since at least February 24,
12 1999. These are not isolated examples of employment practices or individual decisions. On the
13 contrary, these incidents are representative of ABERCROMBIE's systematic discrimination
14 against women and in favor of male applicants, employees and managers, to create a workforce
15 which is disproportionately male despite the fact that women have historically represented far
16 more than 50% of the national retail sales workforce.

17 36. The under-representation of women in retail store employees and
18 management positions throughout ABERCROMBIE's approximately 700 stores in the United
19 States results from an intentional policy and practice of discrimination on the basis of gender in
20 recruitment, processing of job applications, hiring, initial job assignment, weekly hours
21 allocation, internal job transfer, inter-store transfer, promotion and termination.

22 37. ABERCROMBIE has pursued policies or practices on a continuing basis
23 that have denied or restricted job opportunities to qualified women applicants and employees.

24 38. Such discriminatory policies or practices include, without limitation:

25 a. Reliance on subjective, arbitrary, standardless, and unvalidated
26 criteria in making hiring decisions, focusing on whether applicants are male, rather than whether
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1 they have relevant job experience and would be responsible, effective retail store employees who
2 could perform their jobs well;

3 b. Reliance on subjective, arbitrary, standardless, and unvalidated
4 criteria in making decisions in job assignments, weekly hour allocations, and ability to transfer
5 between stores focusing on whether employees are male, rather than whether they would be
6 responsible, effective retail store employees who perform their jobs well;

7 c. Assigning women applicants and Brand Representatives to stock
8 room and overnight shift positions where they are out of the public eye;

9 d. Targeting male candidates for recruitment, both systemically (e.g.,
10 targeting specific college fraternities for recruitment) and individually (e.g., inviting individual
11 male customers in the store to apply to become Brand Representatives), but avoiding, ignoring,
12 discouraging or dissuading equally qualified women from applying;

13 e. Use of corporate “blitzes” to identify stores with “too many
14 women” and to purge women retail store employees; and

15 f. Terminating employees based on gender without regard to their
16 performance on the job.

17 g. Maintaining a numerical limitation on the number of females who
18 could be hired for retail floor positions or be assigned to “greeter” (front door) duties.

19 h. Denying women promotions to store management positions (e.g.
20 assistant manager and store manager) and denying women opportunities to apply for positions in
21 ABERCROMBIE’s manager-in-training program.

22 **FIRST CAUSE OF ACTION**

23 **GENDER DISCRIMINATION IN EMPLOYMENT**
24 **(42 U.S.C. § 2000e et seq.)**

25 **(By Plaintiffs On Behalf Of Themselves And Of The Class)**

26 39. Plaintiffs incorporate paragraphs 1 through 38 as alleged above.

27 40. This Claim is brought on behalf of JENNIFER LU and ELIZABETH
28

1 WEST on behalf of themselves and the class they represent.

2 41. ABERCROMBIE has maintained a system that is intentionally
3 discriminatory, subjective, standardless, and arbitrary with respect to recruitment, hiring, job
4 assignment, transfer, weekly hour allocation, promotion and termination. The system has an
5 adverse disparate impact on women applicants and employees. This system is not and cannot be
6 justified by business necessity, but even if it could be so justified, less discriminatory alternatives
7 exist that could equally serve any alleged business necessity.

8 42. ABERCROMBIE's discriminatory policies or practices described above
9 have denied women applicants and employees employment, job assignments, job transfers,
10 promotions to management positions and weekly hour allocations, resulting in the loss of past and
11 future wages and other job benefits.

12 43. The foregoing conduct constitutes illegal, intentional discrimination in the
13 form of unjustified disparate impact prohibited by 42 U.S.C. § 2000e, *et seq.*

14 44. Plaintiffs request relief as hereinafter provided.

15 **SECOND CAUSE OF ACTION**

16 **GENDER DISCRIMINATION IN EMPLOYMENT**
17 **Government Code § 12900, *et seq.*)**

18 **(By Plaintiffs On Behalf Of Themselves And Of The Class)**

19 45. Plaintiffs incorporate paragraphs 1 through 44 as alleged above.

20 46. This claim is brought on behalf of JENNIFER LU, ELIZABETH WEST,
21 and the subclass of California class members they represent.

22 47. ABERCROMBIE has maintained a system that is intentionally
23 discriminatory, subjective, standardless, and arbitrary with respect to recruitment, hiring, job
24 assignment, transfer, weekly hour allocation, promotion and termination. The system has an
25 adverse disparate impact on women applicants and employees. This system is not and cannot be
26 justified by business necessity, but even if it could be so justified, less discriminatory alternatives
27 exist that could equally serve any alleged business necessity.

1 48. ABERCROMBIE's discriminatory policies or practices described above
2 have denied women applicants and employees opportunities for employment, job assignments,
3 job transfers, promotions to management positions and weekly hour allocations, resulting in the
4 loss of past and future wages and other job benefits. ABERCROMBIE has also breached its
5 affirmative duty to take all reasonable steps necessary to prevent employment discrimination
6 from occurring.

7 49. The foregoing conduct constitutes illegal, intentional discrimination
8 as unjustified disparate impact prohibited by Government Code section 12900, *et seq.*

9 50. Plaintiff JENNIFER LU has received her Right to Sue letter from the
10 EEOC. Plaintiffs have therefore timely complied with all prerequisites to suit.

11 51. Plaintiffs request relief as hereinafter provided.

12 **ALLEGATIONS REGARDING RELIEF**

13 52. Plaintiffs, and the class they seek to represent, have no plain, adequate, or
14 complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in
15 this action is the only means of securing complete and adequate relief. Plaintiffs, and the class
16 they seek to represent, are now suffering and will continue to suffer irreparable injury from
17 defendant's discriminatory acts and omissions.

18 53. ABERCROMBIE's actions have caused and continue to cause plaintiffs
19 and all class members substantial losses in earnings, work experience, weekly hour allocations,
20 and other employment benefits.

21 54. In addition, representative plaintiffs and the class suffer and continue to
22 suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to
23 proof.

24 55. ABERCROMBIE performed the acts herein alleged with malice, fraud,
25 oppression and/or reckless indifference. Plaintiffs and class members are thus entitled to recover
26 punitive damages in an amount according to proof.
27
28

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the class pray for relief as follows:

56. Certification of the case as a class action on behalf of the proposed class;

57. Designation of Representative Plaintiffs JENNIFER LU and ELIZABETH WEST as representatives of the class;

58. Designation of Representative Plaintiffs' counsel of record as class counsel;

59. A preliminary and permanent injunction against ABERCROMBIE and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs, and usages set forth herein;

60. An order that ABERCROMBIE institute and carry out policies, practices, and programs that provide equal employment opportunities for all women, and that it eradicate the effects of its past and present unlawful employment practices;

61. An order reinstating or instating plaintiffs and class members to their rightful positions at ABERCROMBIE, or in lieu of reinstatements or instatements, an order for front pay benefits;

62. Back pay (including interest and benefits) for individual plaintiffs and class members;

63. All damages sustained as a result of ABERCROMBIE's conduct, including damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;

64. Exemplary and punitive damages in an amount commensurate with ABERCROMBIE's ability to pay and deter future conduct;

65. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;

66. Pre-judgment and post-judgment interest, as provided by law; and

1 67. Such other and further legal and equitable relief as this Court deems
2 necessary, just and proper.

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4 Dated: November 8, 2004

Respectfully submitted,

MINAMI, LEW & TAMAKI LLP

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7 By: 

8 Jack W. Lee

9 Attorneys for Plaintiffs

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury as to all issues for which they have a right
13 to trial.

14 Dated: November 8, 2004

Respectfully submitted,

MINAMI, LEW & TAMAKI LLP

15
16
17 By: 

18 Jack W. Lee

19 Attorneys for Plaintiffs